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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

GERRON LINDSEY,

Petitioner.

V.

**STATE OF DELAWARE,
ATTORNEY GENERAL,
SUPERINTENDENT OF THE
DEPARTMENT OF CORRECTIONS
AND THE WARDEN DELAWARE
CORRECTIONAL CENTER,**

Respondents.

Docket No. Civ. Act. No. 05-164-SLR

AFFIDAVIT OF MICHAEL V. GILBERTI

MICHAEL V. GILBERTI makes this Affidavit as follows:

1. I am a partner in the law firm of Epstein & Gilberti, LLC, and have represented Gerron Lindsey in this litigation for post-conviction relief under 28 U.S.C. § 2254. In that capacity, I am personally aware of the facts contained in this Affidavit, which I submit in support of this motion to extend the time to file a notice of appeal under Fed. R. App. 4(a)(5)(A)(ii) on grounds of excusable neglect.

2. On March 24, 2006, the Court issued its opinion and entered an order, dismissing Gerron Lindsey's petition under 28 U.S.C. § 2254 as being time-barred. Also at that time, the Court declined to issue a Certificate of Appealability.

3. On Monday, April 24, 2006 (mailed by overnight mail on Friday, April 21, 2006, under the erroneous impression that, because the Court had declined to issue a Certificate of Appealability, the only recourse was filing a motion to appeal with the United States Court of Appeals for the Third Circuit, I filed a motion to appeal with the Third Circuit. The motion included as exhibits copies of the petition (with exhibits), the State's opposition, Mr. Lindsey's reply, the Court's opinion and order. A copy of the Motion to Appeal (without the voluminous attachments) is attached to and made a part of this Affidavit as Exhibit A.

4. However, based upon that same erroneous impression, I did not file a Notice of Appeal. On the afternoon of Thursday, April 27, 2006, a clerk from the Third Circuit advised counsel's office that a Notice of Appeal was required.

5. Attached as Exhibit B is a Notice of Appeal for filing in the event that the Court grants this motion.

6. Any delay is slight and there is no prejudice to any party.

7. There is excusable neglect and the Court should grant this motion.

I hereby declare under penalty of perjury that the foregoing statements contained in this document are true and correct.

Executed on: April 28, 2006

MICHAEL V. GILBERTI

By: /s/ Michael V. Gilberti
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